UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,	)	Case No. 3:16-cr-26
	)	
	)	
v.	)	SENTENCING BRIEF
	)	
	)	
BENJAMIN JOHN HIGGERSON,	)	
	)	
Defendant.	)	

The United States of America, in the Southern District of Iowa, by and through the United States Attorney for the Southern District of Iowa and his Assistant United States Attorney Clifford R. Cronk III presents this Sentencing Brief as ordered by the Court.

I. Factual and Procedural Background

A. Investigation and issuance of a search warrant

"Playpen" was a child pornography bulletin board and website dedicated to the advertisement and distribution of child pornography and the discussion of matters pertinent to the sexual abuse of children, including the safety and security of individuals who seek to sexually exploit children online. After successfully registering and logging into the site, a user could access any number of sections, forums, and sub-forums. Some of the sections, forums, and sub-forums available to users included: (a) Jailbait – Boy; (b) Jailbait – Girl; (c) Preteen – Boy; (d) Preteen – Girl; (e) Pre-teen Videos – Girl HC; (f) Pre-teen Videos – Boys HC; (g) Toddlers; and (h) Kinky Fetish – Scat. An additional section and forum was also listed in which members could exchange usernames on a Network-based instant messaging service is commonly used by subjects engaged in the online sexual exploitation of children. On or about February 20, 2015, the computer server hosting "Playpen" was seized by the F.B.I. from a web-hosting facility in Lenoir, North Carolina. Between February 20, 2015, and March 4, 2015, agents acting pursuant to an order of the United States District Court for the Eastern District of Virginia monitored electronic communications of users of the website. The United States District Court for the Eastern District of Virginia allowed agents to deploy a Network Investigative Technique (NIT) in an attempt to identify the actual IP addresses and other identifying information of computers used to access the website. Pursuant to that authorization, between February 20, 2015, and approximately March 4, 2015, each time any user or administrator logged into the website by entering a username and password, the FBI was authorized to deploy the NIT, which would send one or more communications to the user's computer. Those communications were designed to identify the computer accessing the website, its location, other information about the computer, and the user of the computer. According to data obtained from logs on the website, a user with the user name "pantysniffer2" was identified as an active member of "Playpen." In March 2015, an administrative subpoena/summons was served to Mediacom Cable requesting information related to the user who was assigned to the "pamtysniffer2's" IP address. According to the information received from Mediacom, Alicia Higgerson was receiving Internet service at 16 Jensen Court, Iowa City, Iowa 52246; internet service was current as of March 4, 2015 at the premises. Further checks identified the defendant as an additional resident of 16 Jensen Court, Iowa City, Iowa 52246.

On Wednesday, September 9, 2015, pursuant to a search warrant, FBI agents conducted a search of 16 Jensen Court, Iowa City, Iowa. The residence was entered at approximately 7:18 a.m., and the search was concluded and agents exited the residence at approximately 10:22 am. Numerous items were seized because they were found to store and contain child pornography.

On a 60GB hard drive (serial number NN4UT47160M5) associated with the Blue and Grey Dell Inspiron 5150 laptop (serial number 9X2MC51), the FBI found 141 images and 25 videos of child pornography. On a 250 GB hard drive (serial number 992FT1LVTEU7), associated with the Black Dell Inspiron laptop (serial number 1QXRXJ1), the FBI found 76 images and 26 videos of child pornography plus the Tor program on the device. On a Black USB Toshiba 1.5TB hard drive (serial number 43FZTJIPTTV2), the FBO identified 74 images and 46 videos containing child pornography. On a 500GB hard drive (serial number W3PHY7NX), associated with Black DP, model 15 laptop (serial number 5CD5303CL6), the FBI identified one video of child pornography on this device. Additionally, the TOR (anonymous internet surfing) program was found on this device. On the 20GB hard drive (serial number LM20A01101A), associated with White Gateway Desktop Computer (serial number 0019892693), LEO identified one image of child erotica. The device also showed deleted folders titled, “Newstar Diana” and “dasha,” which both are known as common child pornography and child erotica search terms.

Programs identified on these devices including uTorrent.exe, LimeWire.exe, BitTorrent-5.0.9.exe, and aresregular196_installer.exe – all filing-sharing programs.

All of the items containing child pornography have been linked to the defendant. He made post-arrest statements explaining his interest in the material.

During the review of the above images, Special Agent Cassar observed images of prepubescent females and males ranging in age from infants through teenage years. Some images and videos contained children in bondage and children crying while being penetrated by adult men.

B. Defendant’s guilty plea

On October 24, 2016, Higgerson pled guilty to Unlawful Possession of Child Pornography (Count 1) and agreed to forfeiture of the computer and digital media used in connection with the offense.

II. History and Characteristics of the Defendant

The defendant is thirty-five (35) years old. He is a college graduate with a degree in Psychology from the University of Iowa. He had a B-average when graduated with this degree. He was diagnosed with ADHD as a child. He was gainfully employed as a girl's softball umpire. He lives with his mother. He has no criminal history except for driving offenses.

III. Guideline Calculations

A. Base Offense Level, enhancements and reductions

Appendix A of the Federal Sentencing Guidelines Manual provides that the appropriate guideline section for a violation of 18 U.S.C. § 2252 is § 2G2.2. Under U.S.S.G. § 2G2.2(a)(1) an offense involving the possession of child pornography has a base offense level of 18. Because the material involved a prepubescent minor or a minor who had not attained the age of 12 years, the offense level is increased by two levels pursuant to §2G2.2(b)(2). The material portrays sadistic/masochistic conduct and other depictions of violence so the offense level is increased by four more levels. U.S.S.G. §2G2.2(b)(4). The offense involved the use of a computer for the possession, transmission, receipt, or distribution of the material and for accessing with intent to view the material which increases the offense level by two more levels under §2G2.2(b)(6). Lastly, the offense involved 600 or more images resulting in an additional five offense levels pursuant to §2G2.2(b)(7)(D). The Government will move for the third level reduction under USSG § 3E1.1(b). With a three-level reduction for acceptance of responsibility, this results in a Total Offense Level of 28.

B. Criminal History

Higgerson's criminal history involves driving offenses. No criminal history points were assessed. Higgerson's Criminal History Category is Category I.

C. Advisory Guideline Range

With a Total Offense Level of 28 and Criminal History Category of I, the advisory guideline range is 78 to 97 months.

III. Government's recommendation

Pursuant to 18 U.S.C. § 3553(a), the Court is to consider the nature and circumstances of the offense and the background and characteristics of the defendant. This case involves a very serious offense; it carries a maximum sentence of twenty years. It is serious because it involves the recording of the sexual abuse of children and the proliferation of the crime by encouraging others to view the images. It is serious because it involves the abuse of very young children by adults. By commenting on and opining about the horrific images, the defendant fueled the appetite of other like-minded individuals, to sexually abuse children or at least witness that abuse without consequence. He also further victimized dozens of innocent children by perpetuating the crime because each new viewing is part of a continual affront to the privacy, dignity, and mental health of the children depicted. Child pornography victims report "suffering from the knowledge that the images of their graphic abuse are being utilized for sexual gratification." http://www.ussc.gov/research/congressional-reports/2012-report-congress-federal-child-pornography-offenses, at 113. Because of the widespread distribution of these images, some victims "fear that strangers they see on the street have seen images of their abuse, and they are ashamed and embarrassed that a teacher, a potential date, or a stranger in public will recognize them." *Id.* The typical possessor, like the defendant, whose actions never extend beyond the downloading and sharing of files, has contributed to the exploitation and victimization of children. *See United States v. Bistline,* 665 F.3d 758, 765 (6th Cir. 2012) ("That the producers of child pornography are more culpable, however, does not mean that its knowing and deliberate possessors are barely culpable at all.").

Defendant viewed, reviewed, and downloaded child pornography. He posted comments about the images; and he shared his comments with thousands of others who were members of the "Playpen" network group. All of this activity took place in Defendant's home where he lived with his mother. There is no question that Defendant understands the wrongfulness of his conduct and that he lacked the compassion, the conscience, and the self-control to refrain from that conduct. The defendant continued repeatedly to search for, find, and download offensive images of the abuse of children.

The Court must address the need to protect the public, promote respect for the law, provide adequate deterrence to criminal conduct, provide just punishment, and avoid unwarranted sentencing disparities among defendants with similar records who have committed similar offenses. The Government anticipates that the Defendant will argue for a variance asking the Court to reject the sentencing guidelines. But the sentencing commission and Congress have updated, adjusted, and improved the guidelines over time to correct past guideline failures. The Court should reject the defendant's invitation to discredit the guidelines as they perform an important function, exhibit the will of Congress and provide a basis for consistency in sentencing.

There being no past history of sexual abuse or real childhood trauma, no explanation for becoming ensconced in a life that glorifies child sex abuse and glorifying it himself, and there being no grounds for treating the defendant more leniently than the average offender, the Government is seeking a sentence at the bottom of the advisory guideline range.

The Court should impose a restitution figure of at least $1,000 for each victim seeking restitution or such amount as is reasonable considering the number of victims. The Government is not seeking a fine. It is seeking a 5 year period of supervised release.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2017, I electronically filed the foregoing with the Clerk of Court using the CM ECF system. I hereby certify that a copy of this document was served on the parties or attorneys of record by: ECF/Electronic filing.

UNITED STATES ATTORNEY

By: /s/*Clifford R. Cronk III*
Assistant U. S. Attorney